



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

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N/D

144520

REPLY TO ATTENTION OF:

MEMORANDUM

SUBJECT: Settlement Analysis for Dead Creek Site No. 60, Sauget, Illinois

FROM: David A. Ullrich
Acting Director, Waste Management Division

Bertram C. Frey
Acting Regional Counsel

TO: Valdas V. Adamkus
Regional Administrator

This memorandum recommends that the signed settlement agreement (attached) submitted by the four PRPs at the Dead Creek Site in Sauget, Illinois be approved and signed. An emergency response action was conducted at the site in 1982 at a cost of \$49,974.51. It is strongly recommended that this settlement be accepted because it is very unlikely that this matter will ever become a filed case due to the small amount of money involved and due to the fact that the money spent cannot be recovered as a result of the expiration of the applicable statute of limitations. Following is a ten point analysis of the settlement:

1. Volume of the Wastes Contributed

This removal action consisted of installing a chain link fence around the site portion of the Dead Creek, specifically that portion of the Dead Creek which is bordered by Judith Lane on the south and Queeny Avenue to the north in Sauget, Illinois. A report prepared by the Illinois Environmental Protection Agency (IEPA) (St. John, 1981) indicates that Monsanto and Cerro Copper both have facilities at the headwaters of the site and that they are known to have discharged process wastes into Dead Creek prior to 1970. Monsanto produced PCBs at its Sauget Facility, and sampling of the holding ponds behind Cerro Copper's recycling plant, which at one time were the headwaters of Dead Creek, showed PCBs, dichlorobenzene and high levels of metals. Ruan Trucking is the successor of Harold Waggoner and Company, a trucking firm which "made a practice of washing [its industrial] waste hauling trucks out and discharging the contents into Dead Creek." Midwest Rubber Company, now a division of Empire Chem

Inc., had a pipeline leading from its factory to the creek from the 1940s to the early 1960s. U.S. EPA relied upon this information in naming the four companies as PRPs at the site; however, U.S. EPA was unable to determine the volume of wastes contributed by each PRP.

2. Nature of Wastes Contributed

Sediment samples collected by IEPA in August 1980 revealed high levels of heavy metals, PCBs, xylene, dichlorobenzene, trichlorobenzene and chloronitrobenzene.

3. Strength of Evidence Linking Wastes at Site to the Settling Party

U.S. EPA relied on an IEPA report (St. John, 1981) to name Monsanto, Cerro Copper, Ruan Trucking and Midwest Rubber as PRPs, and has no independent liability evidence linking these companies to the site.

4. Ability of Settling Party to Pay

The Settling Defendants include large companies, and it is our evaluation that they have the ability to pay the amount indicated in the attached settlement.

5. Litigative Risks in Proceeding to Trial

The litigative risk in going to trial is large. U.S. EPA's removal activities were completed in 1982. Section 113(g)(2) of CERCLA provides that cost recovery actions must be initiated within 3 years after completion of a removal action. Even assuming that U.S. EPA could have brought a cost recovery action within 3 years of the effective date of SARA, the statute of limitations expired in October 1989. The PRPs have raised the statute of limitations as a defense to our demand letters, sent on December 27, 1989.

6. Public Interest Considerations

A Cost Recovery Close Out Memo for this site, dated January 22, 1990, reflects the fact that demand letters were outstanding, but indicates that, because of the relatively small amount of money involved, no further enforcement action would be taken on this site if we failed to recover our costs through those demand letters. Because the decision has been made not to pursue the PRPs in litigation, it is in the public interest to collect the money offered in settlement.

7. Litigative Strengths/ Precedential Value

There was clearly an imminent and substantial threat to the public health, welfare and the environment when U.S. EPA conducted its removal action, and installing a fence around the site was the most efficient and cost-effective means to prevent contact with the site.

8. Nature of the Case that Remains After Settlement

There is no case that remains after settlement.

9. Value of Obtaining a Sum Certain Now

A cost recovery close out memo has already been signed. If we do not collect the money offered in settlement, the Fund will lose the money with no prospect of getting it back.

10. Inequities and Aggravating Factors

This removal action took place in October 1982. There are not many documents available in the file which describe how that removal was conducted. For example, the file indicates that "a local contractor" installed the fence, but no indication of which local contractor. Additionally, as noted previously, our liability evidence consists of only an IEPA report which concludes that the PRPs are responsible.